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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,044	12/18/2001	Petrus Cornelis Jozef Beentjes	APV 31519	7831

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/01/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/936,044

Applicant(s)

BEENTJES ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Claims*

1. Pursuant to entry of the Preliminary Amendment dated 18 December 2001 (Paper No. 6), claims 1-37 are pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "web" usually refers to a lacey/woven material and not to the coating layers that applicants make and use in their technology.

It is suggested that the term "layer", which is supported by applicants' specification in numerous places, be substituted for "web" in the claims.

Please clarify the claims.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Dallmann et al (US 4,746,703).

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Dallmann teaches an extruded (col. 5, line 22) film containing mixtures of polyesters (col. 4, line 4), which polyesters are made from applicants' reagents (col. 4, lines 10+).

6. Claims 1-14 are rejected under 35 U.S.C. 102(b) as anticipated by Goss et al (EP 0437 942 A2).

Goss teaches polyester films that are laminated to other polymer films (page 3, lines 44+). The polyester films contain an extruded (page 2, lines 2+) blend of (a) a linear polyester, such as polyethylene terephthalate (page 2, lines 30 and 36) and (b) 50% or less of a copolyester ether polymer derived from terephthalic acids, ethylene glycol, and/or 1,4-cyclohexane dimethanol (page 2, lines 40+).

The Goss blended polyester films have improved flex-crack properties (abstract).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-22 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woud et al (WO 98/37159) in view of Goss.

Woud teaches container closures, such as screw caps and crown corks (page 1, line 11) made from laminates having metallic bases (page 1, lines 23+) and several layers to prime/protect the layers used therein (page 2, lines 10-24). The layers may be polyesters or polyvinyl chloride (PVC) (abstract).

Woud's closures have interior polymeric layers that protect the metallic base materials from corrosive attack by the containers' contents (page 2, lines 11-16).

Woud fails to teach the claimed polyester blends.

Goss is discussed above. Note that it teaches that its blended polyester films have improved flex-crack properties (abstract).

The references are analogous because they both deal with the production of multilayer polymer films.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the polyester films of Goss when making the closures of Woud in order to impart improved flex-crack properties thereto.

It is deemed desirable to make closures, such as those of Woud, that resist flex cracking, as taught by Goss, in order to increase their useful lives.

10. Claims 23-32 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmoock (DE 36510379A; abstract) in view of Woud and Goss.

Schmoock teaches the production of easy open packaging using foils made of PVC or polyester and a metal layer.

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It fails to teach the use of the polyester films claimed or PVC and polyester layers.

Woud and Goss are discussed above.

The three references are analogous because they all deal with laminated polymeric materials.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the multilayer films suggested by the combination of Woud and Goss, above, when making the easy open packaging of Schmooch in order to produce packaging having the easy open feature of the Schmooch technology along with the flex-crack properties of the closures discussed above.

The motivation to employ the multilayer films suggested by the combination of Woud and Goss is found at page 2, lines 11-16 of Woud and in the abstract of Goss. In each of those passages respectively, Woud teaches that its closures have interior polymeric layers that protect the metallic base materials from corrosive attack by the containers' contents; and Goss teaches that its films have improved flex-crack properties.

It is deemed desirable to make packaging having ends/closures that are easy to open, resistant to flex-cracking and protective of the metal layers therein, as suggested by the combined teachings of Schmooch, Woud and Goss.

In the absence of convincing objective evidence to the contrary, the examiner deems it a matter of engineering choice to use films containing PVC and polyester layers, since Schmooch teaches that either may be used in easy open packaging.

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**Conclusion**

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan  
Patent Examiner  
Technology Center 1700

SMN/smn  
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